



Submitted electronically via www.fcc.gov/ecfs/

Nov. 3, 2017

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW,
Room TW-A325
Washington, DC 20554

Re: Petition for Declaratory Ruling under the Consumer Telephone Consumer Protection Act of 1991
DA/FCC: DA-17-978
CG Docket No. 02-278

Dear Ms. Dortch:

On behalf of Wisconsin's credit unions® and their nearly 3 million members, the Wisconsin Credit Union League (the League) is writing in support of the Petition for Declaratory Relief filed by the Credit Union National Association (CUNA) on Sept. 29, 2017. We fully back CUNA's petition and join them in asking the Federal Communications Commission (FCC) to exempt credit unions from Telephone Consumer Protection Act's (TCPA's) prior express consent requirement for informational calls and texts to members.

Like their counterparts nationwide, Wisconsin credit unions are all tax-exempt, not-for-profit financial cooperatives, solely owned by their members. Unlike banks, which exist to create value for shareholders, credit unions have a statutorily defined mission: "to encourage thrift among its members, create a source of credit at a fair and reasonable cost, and provide an opportunity for its members to improve their economic and social conditions." (Wis. Stats. §186.01). Unique among financial institutions, credit unions enjoy a special relationship with their members. That relationship requires credit unions to communicate effectively and share important information with their member-owners, who welcome and expect this information.

Unfortunately, the Telephone Consumer Protection Act (TCPA) of 1991 unduly impedes credit unions' ability to reach members. That's largely because the TCPA is obsolete, lagging far behind rapidly changing communications technology. To make matters worse, the FCC's guidance on TCPA compliance has only confused the issues, and courts across the country have issued contradictory opinions on the TCPA's requirements. As a result, credit unions find the current TCPA compliance landscape so confusing, that they tell us they feel restrained from contacting members for fear of violating the rules and becoming the targets of increasingly frequent class-action litigation.

The best example of the TCPA's antiquated approach is its different treatment for calls to telephone landlines vs. calls or texts to cell phones. A credit union does not need a member's prior consent to contact him/her at home via a telephone landline, but the TCPA and the FCC's implementing rules require prior express consent to make informational calls or texts to cell phones using an automatic telephone dialing system ("ATDS") or an artificial or prerecorded voice. "ATDS" means equipment that has the capacity to store or produce and dial random or sequential numbers without human intervention, even if it is not presently used for that purpose. Any modern business telephone system is almost certainly an ATDS, because courts have said that equipment will be judged to have the capacity to dial numbers without human

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Member Credit Union National Association

interaction even if modifications, such as software or hardware added to the system, would be required before it could do so. It doesn't matter if the credit union would have to install prohibitively expensive software to make its system an ATDS. If there is the capacity to make that modification, regardless whether the credit union has actually done so, then the system is an ATDS. As a result, credit unions must comply with the express consent requirement, even when they manually dial a member's cell phone and provide crucial financial information to him/her personally.

No wonder credit unions have grown increasingly wary of calling or texting members, even with important information. As CUNA's petition explains, a credit union "risks potentially ruinous class-action litigation if for some reason consent had not been obtained or documented. The different treatment of informational calls to cell phones and landlines is antiquated and unfair and fails to reflect how the vast majority of consumers communicate today."

To help resolve this unfair and archaic imbalance, CUNA has asked the FCC to exempt from the TCPA's prior consent requirement informational (not telemarketing) calls and texts made by credit unions to their members' cell phones. The CUNA petition proposes two methods of balancing the TCPA treatment of informational messages to landlines and cell phones:

- First, CUNA has asked the FCC to adopt an established business relationship ("EBR") exemption for credit union informational messages to cell phones. This makes sense for several reasons. As explained earlier, credit unions have a unique relationship with their member-owners, who have a vested interest in being informed about issues such as credit union governance, fraudulent activity, and account information like overdue payments. For more than 20 years, the FCC exempted all residential calls, both informational calls and telemarketing calls, from the TCPA's prior express consent requirement where the called party had an EBR with the caller. The FCC should at least treat informational calls to cell phones as it does residential calls by instituting this EBR exemption for informational autodialed or artificial or prerecorded voice calls (including texts) made by credit unions to their members' cell phones.
- Second, CUNA has asked the FCC to use its authority to exempt credit union informational calls or texts that are in fact free to the member under his/her wireless plan. This simply makes sense: As the petition explains, "the vast majority of consumers are not charged for calls or texts to their wireless phone." If members are not paying for these calls, credit unions should be able to freely provide the information the members want and need.

This proposed approach would only require that the call is, in fact, free to the consumer. It would not require credit unions to ensure that the call is free. Section 227(b)(2)(C) of the TCPA (the free-to-end-user provision) imposes no requirement that the caller ensure the call is free, and it would be illogical and unnecessarily burdensome to impose such a requirement on credit unions. This is especially true for credit unions because most of them – including Wisconsin's credit unions – are small businesses. As of March 2017, Wisconsin's 140 credit unions had a median asset size of just \$44 million. At that size, a Wisconsin credit union has, on average, just 10.5 employees.

Adopting these exemptions would not just benefit credit unions, but also their members, by aligning FCC policy with recent guidance from the Consumer Financial Protection Bureau (CFPB) that urges credit unions and other financial institutions to text consumers with important financial information. The CFPB has acknowledged that consumers benefit when "real time information" is sent via text alerts. As CUNA states in its petition: "When the CFPB is urging credit unions to provide 'real-time information' to consumers through text alerts to help protect their finances, while the TCPA and Commission rules subject credit unions to liability for automated calls and texts, it creates extremely problematic, conflicting guidance about how credit unions should be communicating with their members."

We could not agree more. The FCC has a responsibility to American consumers, and to credit unions, to provide a modern, sensible TCPA compliance framework that balances consumers' privacy with their need for important financial information. Granting the CUNA petition would be a step forward in eliminating the confusion, uncertainty and risk that surrounds TCPA compliance for credit unions.

The League asks the FCC to grant CUNA's petition and issue a declaratory ruling that wireless informational calls and texts to credit union member-owners with whom the credit union has an established business relationship, or where the call or text is in fact free, are exempt from the TCPA's prior express consent requirement.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul Guttormsson", with a long horizontal flourish extending to the right.

Paul Guttormsson
Legal Counsel
The Wisconsin Credit Union League